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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK
-----x

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff, Adv.Pro.No. 08-01789 (BRL)

v.

BERNARD L. MADOFF INVESTMENT SIPA Liquidation
SECURITIES, LLC,

Defendant. (Substantively Consolidated)

-----x
In re

BERNARD L. MADOFF INVESTMENT
SECURITIES, LLC,

Debtor.

-----x

OBJECTION TO TRUSTEE'S DETERMINATION OF CLAIM

David Alan Schustack, by his attorneys, Rosen &
Associates, P.C., hereby objects to the Notice of Trustee's
Determination of Claim dated September 11, 2009 ("**Determination
Letter**"), attached hereto as Exhibit "A."

BACKGROUND

1. David Alan Schustack is a "customer," as defined

by section 78111 of the Securities Investor Protection Act ("SIPA"), of Bernard L. Madoff Investment Securities, LLC ("BLMIS").

2. Mr. Schustack's final BLIMS statement, dated November 30, 2008, states that he owns securities valued at \$4,094,300.77 (the "**Final Statement**").

3. On December 11, 2008, the above-captioned liquidation proceeding was commenced against BLIMS, pursuant to SIPA. See Order, Securities and Exchange Commission v. Madoff, No. 08-10791 (S.D.N.Y. Dec. 15, 2008) (ordering relief under SIPA and transferring proceeding to the United States Bankruptcy Court for the Southern District of New York) [Docket No. 4]. Irving Picard was appointed Trustee (the "**Trustee**"), charged with overseeing the liquidation of BLMIS and processing customer claims for money pursuant to SIPA. Id.; 15 U.S.C. §78fff-1(a).

4. On December 23, 2008, this Court issued an Order directing the Trustee to disseminate notice and claim forms to BLIMS customers and setting forth claim-filing deadlines. See Order [Docket No. 12]. Upon information and belief, the Trustee disseminated notice and claim forms to BLIMS's customers in accordance with this Court's Order. The December 23, 2008 Order further provided that, to the extent the Trustee disagrees with the amount set forth on a customer

claim form, the Trustee "shall notify such claimant by mail of his determination that the claim is disallowed, in whole or in part, and the reason therefor . . ." See Order at 6 [Docket No. 1] (emphasis added).

5. On or about February 2, 2009, Mr. Schustack submitted a customer claim form to Securities Investor Protection Corporation ("**SIPC**") setting forth his claim in the amount of \$4,094,300.77. See Schustack Customer Claim for Account No. 1-ZA061 ("**Schustack Customer Claim**") attached hereto as Exhibit "B."

6. Mr. Schustack submitted the Final Statement with the Schustack Customer Claim. See Schustack Customer Claim, Exhibit B. On September 11, 2009, the Trustee sent Mr. Schustack the Determination Letter allowing Mr. Schustack's claim only in the amount of \$2,912.130.56, rather than \$4,094,300.77, the total amount claimed by Mr. Schustack. See Determination Letter, Exhibit A.

7. Mr. Schustack hereby objects to the Determination Letter for the reasons described below.

GROUND'S FOR OBJECTION

8. First Objection. The Determination Letter fails to comply with this Court's December 23, 2008 Order that directs the Trustee to satisfy customer claims and deliver securities in

accordance "with the Debtor's books and records." Dec. 23, 2008 Order at 5 [Docket No. 12]. The Final Statement which as mentioned above was included by Mr. Schustack, is the best evidence of the amount owed based on the Debtor's books and records. Accordingly, the claim should be allowed in the full amount of \$4,094,300.77.

9. Second Objection. The Trustee has set forth no legal basis for disallowing the Schustack Customer Claim in full as filed. The only explanations set forth in the Determination Letter are that (1) "[n]o securities were ever purchased for your account," and (2) the "claim is allowed for ... the amount of money you deposited with BLMIS for the purchase of securities, less subsequent withdrawals, as outlined in Table 1." Determination Letter at 1, Exhibit A. Neither of these purported grounds for disallowance have any statutory or other legal basis. Moreover, the Determination Letter:

(a) does not clearly provide "the reason" for the disallowance, as required by this Court's December 23, 2008 Order;

(b) is inadequate to rebut the prima facie validity of the Schustack Customer Claim as provided in 11 U.S.C. § 502(a) and Bankruptcy Rule 3001(f); and

(c) violates general principles of applicable law that require that objections to a proof of claim set forth, at a minimum, the relevant facts and legal theories upon which the objection is based. As stated by the Bankruptcy Court for the Southern District of New York, "[t]he best practice is to denominate an objection to a claim as just that. The body of the objection should identify the claim. It should also, at a minimum, allege those facts necessary to support the objection . . . and provide a description of the theories on which it is based. In short, proofs of claim have been held analogous to complaints initiating civil actions; an objection to a claim should therefore meet the standards of an answer. It should make clear which facts are disputed; it should allege facts necessary to affirmative defenses; and it should describe the theoretical bases of those defenses.'" In re Enron Corp., No. 01-16034, 2003 Bankr. LEXIS 2261, at *25 (Bankr. S.D.N.Y. Jan. 13, 2003) (citing 9 Collier on Bankruptcy ¶ 3007.01[3] (15th ed.) (footnotes omitted).

10. Third Objection. 15 U.S.C. § 78111(11) provides that a customer's claim shall be allowed in the amount of the customer's "net equity." 15 U.S.C. § 78fff-2(b). Upon information and belief, the Trustee objects to the Schustack Customer Claim on the ground that "net equity" should be

determined by principal contributed to the account less any withdrawals, without regard to any gains reflected in the Final Statement or prior BLIMS statements. See Determination Letter Table 1. See also Another View: Unwinding Madoff Fraud Fairly, Deal Blog. NY times.com (May 6, 2009). This is incorrect for the following reasons:

(a) the Trustee's proposed formulation has no support in the language of the statute or interpretive case law and, in fact, adds words and concepts to the statute that do not exist.

(b) SIPA's legislative history emphasizes Congress's intention that the statute protect customer expectations by ensuring that customers of retail brokerage firms can rely on their account statements. The BLIMS statements received by Mr. Schustack stated that he owned a list of blue chip securities. It makes no difference whether the securities were purchased.

A customer generally expects to receive *what he believes* is in his account at the time the stockbroker ceases business. But because securities may have been lost, improperly hypothecated, misappropriated, *never purchased*, or even stolen, it is not always possible to provide to customers that which they expect to receive, that is, securities which they maintained in their brokerage account . .

. . By seeking to make customer accounts whole and returning them to customers in the form they existed on the filing date, the amendments . . . would satisfy customers' legitimate expectations . . .

S.Rep.No. 95-763, at 2 (1978) (emphasis added). While there may be a basis to disallow customer claims for wholly fictitious securities of nonexisting entities, here the securities set forth on Mr. Schustack's Final Statement and prior statements were those of actual companies listed on the stock exchange.

(c) Mr. Schustack deposited funds in BLIMS with the expectation that the amount would grow, his account statements showed such growth, and the balance on his Final Statement reflects the benefit of his bargain. The Trustee's formula is an improper and wholly inadequate measure of loss. See Yiscons v. Lehman Brothers, Inc., 244 Fed. Appx. 708, 713-14 (6th Cir. 2007) (court applied expectancy measure of damages to claim against successor in Ponzi scheme case, and rejected money in/money out theory).

(d) the Trustee's Determination Letter is contrary to SIPC's own policies and practices, as reflected in the sworn testimony of Stephen Harbeck, SIPC's President and CEO, and its actions in similar liquidation proceedings. For example, in the New Times SIPA liquidation, in the context of

discussing claims filing deadlines, Harbeck acknowledged that SIPC would replace securities listed on customer account statements, even if the securities had never been purchased:

Harbeck: [I]f you file within sixty days, you'll get the securities, without question. Whether -- if they triple in value, you'll get the securities Even if they're not there.

Court: Even if they're not there.

Harbeck: Correct.

Court: In other words, if the money was diverted, converted -

Harbeck: And the securities were never purchased.

Court. Okay.

Harbeck: And if those positions triple, we will gladly give the people their securities positions.

Transcript at 37-39, In re New Times Securities Services, Inc., No. 00-8178 (Bankr. E.D.N.Y. July 28, 2000), attached hereto as Exhibit "C." The Second Circuit's discussion of SIPC's claims processing in New Times further indicates that, with respect to customers who thought they were invested in listed securities, SIPC paid customer claims based on the customers' final account statements, even where the securities had never been purchased:

Meanwhile, investors who were misled.

. . . to believe that they were investing in mutual funds that in reality existed were treated much more favorably. Although they were not actually invested in those real funds -- because Goren never executed the transactions -- the information that these claimants received on their account statements mirrored what would have happened had the given transaction been executed. As a result, the Trustee deemed those customers' claims to be "securities claims" eligible to receive up to \$500,000 in SIPC advances. The Trustee indicates that this disparate treatment was justified because he could purchase real, existing securities to satisfy such securities claims. Furthermore, the Trustee notes that, if they were checking on their mutual funds, the "securities claimants," . . . could have confirmed the existence of those funds and tracked the funds' performance against Goren's account statements.

In re New Times Sec. Services, Inc., 371 F.3d 68, 74 (2d Cir. 2004). See also Brief of Appellant SIPC in In re New Times Sec. Services, Inc., at 23-24 (under SIPC "reasonable and legitimate claimant expectations on the filing date are controlling even where inconsistent with transactional reality" such as when the customer receives a confirmation reflecting a purchase, "even where the purchase never actually occurred and the debtor instead converted the cash deposited by the claimant to fund that purchase."). Mr. Schustack is situated no differently from

the "securities claimants" discussed by the Court of Appeals for the Second Circuit. Accordingly, his claim should be recognized in full.

11. In the event that this Court determines that claimed gains on deposited funds should not be allowed, then in the alternative, Mr. Schustack is entitled to recover interest on such deposited amounts. Such interest is required as a matter of state law, and the United States Supreme Court has determined that in bankruptcy cases, creditor claims, including the right to interest, are determined by state law. See Travelers Cas. & Sur. Co. of Am. v. PG&E, 549 U.S. 443, 450-51, 127 S.Ct. 1199, 167 L.Ed.2d 178 (2007) ("[W]e have long recognized that the 'basic federal rule' in bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt's estate to state law.").

(a) Under New York law, which is applicable here, funds deposited with BLMIS under these circumstances are entitled to interest. See, e.g., N.Y.C.P.L.R. § 5004; N.Y. Gen. Oblig. § 5-501, et seq. Accordingly, the Schustack Customer Claim should be recalculated by adding interest to all funds deposited by Mr. Schustack.

(b) Under New York law, which is applicable

here, Mr. Schustack is entitled to any returns BLMIS earned on the deposited funds under principles of unjust enrichment. Accordingly, the Schustack Customer Claim should be recalculated by adding the amounts earned by BLMIS on Mr. Schustack's deposits. See, e.g., Steinberg v. Sherman, No. 07-1001, 2008 U.S. Dist. LEXIS 35786, at *14-15 (S.D.N.Y. May 2, 2008) ("Causes of action such as ... conversion and unjust enrichment qualify for the recovery of prejudgment interest."); Eighteen Holding Corp. v. Drizin, 701 N.Y.S.2d 427, 428 (1st Dep't 2000) (awarding prejudgment interest on claims for unjust enrichment and conversion).

12. Fourth Objection. The Trustee's unilateral reduction of the Schustack Customer Claim by the amount of any prior gains reflected on the Final Statement, or prior statements, avoids such gains without alleging any grounds therefor or demonstrating that such gains are avoidable under the Bankruptcy Code's avoidance provisions. As such, any such disallowance is improper and unjustified, and the Determination letter should be stricken. Fed.R.Bankr.P. 7001(1); Fed.R.Bankr.P. 7008.

13. Fifth Objection. The Trustee's determination assumes that BLIMS never earned funds and, therefore, all gains reported to customers were "fictitious." This assumption is

contrary to fact. There is significant evidence that, at some time, BLIMS was at least in part a legitimate business and, therefore, all or a portion of the gains were not fictitious. The burden is on the Trustee to show that BLIMS never earned any amounts to support customer gains and, if at some point it did earn funds, the dates when it ceased to do so. The Trustee is required to state and prove when the Ponzi scheme began.

14. Sixth Objection. Mr. Schustack was required to pay significant income taxes on distributions that the Trustee has alleged are fictitious. The Trustee has justified his proposed method of calculating claims as fair and reasonable because fictitious gains should not compete dollar for dollar with claims for funds actually deposited by customers, and his proposed method equalizes the treatment of all customers. This justification is not correct insofar as customers did not have the use of reported, but fictitious, gains because of required income tax payments. Even assuming arguendo the Trustee's method is correct, the Schustack Customer Claim should be adjusted by adding all amounts he actually paid as income taxes on allegedly fictitious gains to equalize his treatment with that of other customers. See SEC v. Byers, 2009 U.S. Dist. LEXIS 63741, at *11-12 (S.D.N.Y. 2009) (in equitable distribution proceeding, court allowed claims for reinvestment of fictitious

profits to equitably treat reinvesting customers as compared with customers receiving distributions).

15. Seventh Objection. The Trustee has sought to condition Mr. Schustack's receipt of any SIPC funds (including undisputed amounts) on the execution of a Partial Assignment and Release that would "release and forever discharge the SIPA Trustee and SIPC ... from any and all claims arising out of or relating to [Mr. Schustack's] BLIMS Account, the Customer Claim filed with the SIPA Trustee and any and all circumstances giving rise to said Customer Claim" See Determination Letter and Partial Assignment and Release attached thereto at 2, Exhibit A. There is no legal basis for requiring such a Partial Assignment and Release, and the Trustee's actions attempt to compel Mr. Schustack to give up substantial rights that are disputed as a condition to receiving amounts that are undisputed. Indeed, conditioning the payment of funds to which customers are statutorily entitled on the execution of a release is contrary to the provisions of SIPA which direct that customer claims be paid "promptly." See 15 U.S.C. § 78fff(a)(1) (noting that one of the purposes of a SIPA liquidation proceeding is "to distribute customer property and . . . otherwise satisfy net equity claims of customers . . . as promptly as possible after the appointment of a trustee."); 15 U.S.C. § 78fff-2(b) ("[T]he

trustee shall promptly discharge ... all obligations of the debtor to a customer ... by the ... making of payments to or for the account of such customer."). Moreover, the demand for a release and assignment violates specific provisions of SIPA providing limited subrogation rights to the BLIMS Trustee, which do not include the assignment and release sought by the BLIMS Trustee. See, e.g., 15 U.S.C. § 78fff(a)(3) (providing that Trustee has "rights of subrogation as provided in this chapter"); 15 U.S.C. § 78fff-2(c)(3) (providing that Trustee's rights as subrogee are subordinate to rights of customers to customer property). In addition, the Trustee's demand is both unconscionable and contrary to public policy and should be stricken.

16. Eighth Objection. SIPA provides that (a) SIPC shall pay the first \$500,000 of each customer claims, and (b) customers have an unsecured claim against customer property for the balance of their claims which is paid pro rata with other customers. 15 U.S.C § 78fff-3 ("In order to provide for prompt payment and satisfaction of net equity claims of customers of debtor, SIPC shall advance to the trustee [up to] \$500,000 for each customer, as may be required to pay ... claims."); 15 U.S.C. § 78fff-2(c)(1)(B) (providing that customers of the debtor "shall share ratably in ... customer property on the basis and

to the extent of their net equities"). Here, the Trustee has acknowledged in the Determination Letter that \$2,912,130.56 of Mr. Schustack's claim is undisputed. As such, SIPC is obligated to pay Mr. Schustack \$2,912,130.56 regardless of how the disputed portion of the claim is resolved. Under these circumstances, the Trustee's failure to pay the \$2,912,130.56 immediately violates SIPA's mandate that payment be "prompt," is not justified by any statutory provision, unjustly enriches SIPC, and seeks to compel Mr. Schustack into surrendering a significant portion of his claim without consideration or compensation in order to obtain funds to which he is entitled as a matter of statute. Mr. Schustack is entitled to receive immediate payment of \$2,912,130.56, plus interest from the date of the determination and appropriate equitable relief as determined by this Court.

17. The Trustee has recently stated a willingness to make payments of undisputed claims along the lines set forth herein, but the documents which accompanied the Trustee's Notice of Determination did not adequately preserve Mr. Schustack's full rights in connection with the contested claims including, without limitation, his ability to continue to assert the rights in the Third, Fourth, Fifth and Sixth Objection herein, and also, required certain assignments which the Trustee is not

authorized to obtain.

RELIEF REQUESTED

18. For the reasons stated herein, the Schustack Customer Claim should be allowed in its entirety.

19. For the reasons stated herein, this Court should direct SIPC to issue immediate payment to Mr. Schustack in the amount of \$2,912,130.56 plus interest from the date of the Determination Letter without imposing conditions to payment that are not authorized or warranted.

20. The Trustee's determination amounts to an improper disallowance of a claim that has prima facie validity. See 11 U.S.C. § 502(a). The Trustee has offered no factual or legal basis for his Determination. The Trustee's Determination Letter, and the objections contained therein, should be stricken, or alternatively, the Trustee should describe his position in detail including all relevant facts, legal theories, and authorities. Upon the filing of such a statement, this matter will be a contested proceeding under Bankruptcy Rule 9014, and Mr. Schustack will file a response.

21. Mr. Schustack requests such other relief as may be just and equitable.

CONCLUSION

22. Mr. Schustack reserves the right to revise,

supplement, or amend this Objection, and any failure to object on a particular ground or grounds shall not be construed as a waiver of Mr. Schustack's right to object on any additional grounds.

23. Mr. Schustack reserves all rights set forth in Bankruptcy Rule 9014, including, without limitation, rights of discovery.

24. Mr. Schustack reserves all objections as to the competence, relevance, materiality, privilege, or admissibility of evidence in any subsequent proceeding or trial of this or any other action for any purpose whatsoever.

25. Mr. Schustack incorporates by reference all reservations of rights set forth in the Schustack Customer Claim.

Dated: October 12, 2009
New York, New York

ROSEN & ASSOCIATES, P.C.
Attorneys for David Alan
Schustack

By: /s/ Sanford P. Rosen
Sanford P. Rosen

747 Third Avenue
New York, NY 10017-2803
(212) 223-1100

Exhibit "A"

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008¹

NOTICE OF TRUSTEE'S DETERMINATION OF CLAIM

September 11, 2009

David Alan Schustack
253 Stratton Road
New Rochelle, NY 10804

Dear David Alan Schustack:

PLEASE READ THIS NOTICE CAREFULLY.

The liquidation of the business of BERNARD L. MADOFF INVESTMENT SECURITIES LLC ("BLMIS") is being conducted by Irving H. Picard, Trustee under the Securities Investor Protection Act, 15 U.S.C. § 78aaa et seq. ("SIPA"), pursuant to an order entered on December 15, 2008 by the United States District Court for the Southern District of New York.

The Trustee has made the following determination regarding your claim on BLMIS Account No. 1ZA061 designated as Claim Number 4980:

Your claim for securities is **DENIED**. No securities were ever purchased for your account.

Your claim is **ALLOWED** for \$2,912,130.56, which was the balance in your BLMIS Account on the Filing Date based on the amount of money you deposited with BLMIS for the purchase of securities, less subsequent withdrawals, as outlined in Table 1 attached hereto.

Your **ALLOWED CLAIM** of \$2,912,130.56 will be satisfied in the following manner:

The enclosed **PARTIAL ASSIGNMENT AND RELEASE** must be executed, notarized and returned in the envelope provided herewith. Upon receipt of the executed and notarized **PARTIAL**

¹ Section 78III(7)(B) of SIPA states that the filing date is "the date on which an application for a protective decree is filed under 78eee(a)(3)," except where the debtor is the subject of a proceeding pending before a United States court "in which a receiver, trustee, or liquidator for such debtor has been appointed and such proceeding was commenced before the date on which such application was filed, the term 'filing date' means the date on which such proceeding was commenced." Section 78III(7)(B). Thus, even though the Application for a protective decree was filed on December 15, 2008, the Filing Date in this action is on December 11, 2008.

ASSIGNMENT AND RELEASE, the Trustee will make a partial satisfaction of your **ALLOWED CLAIM** by sending you a check in the amount of \$500,000.00, with the funds being advanced by Securities Investor Protection Corporation pursuant to section 78fff-3(a)(1) of SIPA. In addition, you will be entitled to receive an additional distribution based upon your **ALLOWED CLAIM** from the fund of customer property, if any.

It is the Trustee's intent, pursuant to SIPA, to submit a Motion for an order of the Bankruptcy Court to allocate assets he has collected and will collect between the fund of customer property and the general estate and to distribute customer property *pro rata* among allowed claimants, such as you. In a decision in this case, Rosenman Family, LLC v. Picard, 401 B.R. 629, 634 (Bankr. S.D.N.Y. 2009), the Bankruptcy Court stated:

The customer estate is a fund consisting of customer property and is limited exclusively to satisfying customer claims. In re Adler Coleman Clearing Corp. (Adler Coleman II), 216 B.R. 719, 722 (Bankr. S.D.N.Y. 1998) ("A SIPA trustee, distributes 'customer property' exclusively among the debtor's customers...."); see also 15 U.S.C. § 78111(4). Accordingly, Customers, as defined by SIPA § 78111(2), enjoy a preferred status and are afforded special protections under SIPA. See New Times Securities, 463 F.3d at 127; Adler Coleman, 195 B.R. at 269."

Id. at 634.

It is not known at this time when the Trustee will be filing such allocation and distribution motion.

Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously determined customer claims in accordance with the Court's order. Nothing in this Notice of Trustee's Determination of Claim shall be construed as a waiver of any rights or claims held by you in having your customer claim re-determined in accordance with any such Court order.

PLEASE TAKE NOTICE: If you disagree with this determination and desire a hearing before Bankruptcy Judge Burton R. Lifland, you **MUST** file your written opposition, setting forth the grounds for your disagreement, referencing Bankruptcy Case No. 08-1789 (BRL) and attaching copies of any documents in support of your position, with the United States Bankruptcy Court and the Trustee within **THIRTY DAYS** after September 11, 2009, the date on which the Trustee mailed this notice.

PLEASE TAKE FURTHER NOTICE: If you do not properly and timely file a written opposition, the Trustee's determination with respect to your claim will be deemed confirmed by the Court and binding on you.

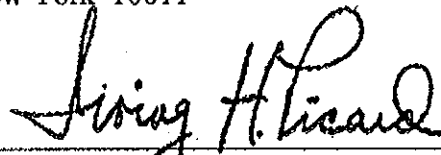
PLEASE TAKE FURTHER NOTICE: If you properly and timely file a written opposition, a hearing date for this controversy will be obtained by the Trustee and you will be notified of that hearing date. Your failure to appear personally or through counsel at such hearing will result in the Trustee's determination with respect to your claim being confirmed by the Court and binding on you.

PLEASE TAKE FURTHER NOTICE: You must mail your opposition, if any, in accordance with the above procedure, to each of the following addresses:

Clerk of the United States Bankruptcy Court for
the Southern District of New York
One Bowling Green
New York, New York 10004

and

Irving H. Picard, Trustee
c/o Baker & Hostetler LLP
45 Rockefeller Plaza
New York, New York 10011



Irving H. Picard

Trustee for the Liquidation of the Business of
Bernard L. Madoff Investment Securities LLC

DEPOSITS		
DATE	TRANSACTION DESCRIPTION	AMOUNT
12/1/1992	CHECK	\$200,000.00
9/24/1993	CHECK	\$100,000.00
11/29/1999	CHECK	\$100,000.00
9/15/2000	CHECK	\$100,000.00
2/5/2008	CHECK	\$3,500,000.00
Total Deposits:		\$4,000,000.00
WITHDRAWALS		
DATE	TRANSACTION DESCRIPTION	AMOUNT
4/8/1993	CHECK	(\$10,661.10)
7/13/1993	CHECK	(\$7,096.50)
10/13/1993	CHECK	(\$4,379.99)
1/14/1994	CHECK	(\$13,199.58)
4/13/1994	CHECK	(\$12,219.76)
7/14/1994	CHECK	(\$10,474.86)
10/13/1994	CHECK	(\$12,223.72)
1/13/1995	CHECK	(\$7,997.07)
4/13/1995	CHECK	(\$11,552.14)
7/14/1995	CHECK	(\$14,395.41)
10/16/1995	CHECK	(\$10,442.17)
1/12/1996	CHECK	(\$12,049.48)
4/12/1996	CHECK	(\$12,345.81)
7/12/1996	CHECK	(\$10,795.21)
10/11/1996	CHECK	(\$13,257.78)
1/13/1997	CHECK	(\$12,996.21)
4/10/1997	CHECK	(\$16,182.14)
7/11/1997	CHECK	(\$18,944.22)
10/10/1997	CHECK	(\$9,865.38)
1/13/1998	CHECK	(\$10,509.56)
4/8/1998	CHECK	(\$15,044.26)

7/9/1998	CHECK	(\$14,409.53)
10/9/1998	CHECK	(\$8,194.92)
1/13/1999	CHECK	(\$15,779.83)
4/13/1999	CHECK	(\$14,488.62)
7/8/1999	CHECK	(\$19,459.26)
10/8/1999	CHECK	(\$9,486.40)
1/6/2000	CHECK	(\$12,198.12)
4/7/2000	CHECK	(\$21,762.37)
7/7/2000	CHECK	(\$12,919.11)
10/11/2000	CHECK	(\$9,396.00)
1/10/2001	CHECK	(\$9,860.07)
4/6/2001	CHECK	(\$23,913.46)
7/9/2001	CHECK	(\$15,919.21)
10/9/2001	CHECK	(\$11,160.39)
1/11/2002	CHECK	(\$17,131.62)
4/10/2002	CHECK	(\$5,943.28)
7/8/2002	CHECK	(\$21,205.37)
10/7/2002	CHECK	(\$26,799.98)
1/10/2003	CHECK	(\$9,912.22)
4/9/2003	CHECK	(\$10,935.91)
7/8/2003	CHECK	(\$13,594.65)
10/9/2003	CHECK	(\$16,810.57)
1/8/2004	CHECK	(\$6,919.01)
4/8/2004	CHECK	(\$10,813.34)
7/7/2004	CHECK	(\$16,358.54)
10/7/2004	CHECK	(\$13,129.50)
1/7/2005	CHECK	(\$10,438.88)
4/7/2005	CHECK	(\$10,702.80)
7/7/2005	CHECK	(\$10,524.19)
10/7/2005	CHECK	(\$10,199.05)
1/9/2006	CHECK	(\$16,351.02)
4/7/2006	CHECK	(\$12,319.06)
7/10/2006	CHECK	(\$13,628.71)
10/6/2006	CHECK	(\$23,521.86)
1/8/2007	CHECK	(\$12,689.54)

4/4/2007	CHECK	(\$11,175.12)
7/6/2007	CHECK	(\$14,653.04)
10/4/2007	CHECK	(\$15,494.00)
1/8/2008	CHECK	(\$12,867.28)
4/7/2008	CHECK	(\$13,435.50)
7/7/2008	CHECK	(\$223,193.05)
10/6/2008	CHECK	(\$61,542.71)
Total Withdrawals:		(\$1,087,869.44)
Total deposits less withdrawals:		\$2,912,130.56

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES INVESTOR PROTECTION
CORPORATION,

Plaintiff-Applicant,

v.

BERNARD L. MADOFF INVESTMENT
SECURITIES LLC,

Defendant.

Adv. Pro. No. 08-01789-BRL

SIPA Liquidation

PARTIAL ASSIGNMENT AND RELEASE

KNOW ALL MEN BY THESE PRESENTS, that David Alan Schustack, located at 253 Stratton Road, New Rochelle, NY 10804 (hereinafter referred to as the "Assignor") in consideration of the payment of \$500,000.00 to satisfy in part his claim for customer protection (the "Customer Claim", having been designated Claim Number 4980) filed in the liquidation proceeding of Bernard L. Madoff Investment Securities LLC ("BLMIS") under the Securities Investor Protection Act, 15 U.S.C. §78aaa et seq. ("SIPA") (see §§78fff-2(b), 78fff-2(d), and §78fff-3(a)(1) of SIPA), does for himself hereby assign, transfer and set over to Irving H. Picard as SIPA Trustee (the "SIPA Trustee") for the liquidation of BLMIS (see §78fff-2(b) of SIPA), and the Securities Investor Protection Corporation ("SIPC"), as subrogee to the extent of its cash advances to the SIPA Trustee for the satisfaction of the aforementioned Customer Claim (see §78fff-3(a)(1) of SIPA), any and all rights, including causes of action or claims, that Assignor now may have against BLMIS and/or any third party arising out of or relating to any fraudulent or illegal activity with respect to Assignor's BLMIS account (Account No. 1ZA061, the "BLMIS Account"), which gave rise to the allowed Customer Claim for securities filed by Assignor

against BLMIS. Such assignment is only to the extent that Assignor has received satisfaction of the Customer Claim as set forth above.

Further, Assignor has not previously compromised or assigned any claim, cause of action or other right against BLMIS, its principals or agents or any third party arising out of or related to any fraudulent or illegal activity giving rise to the Customer Claim.

Upon reasonable request of the SIPA Trustee or SIPC, Assignor agrees to cooperate with the SIPA Trustee or SIPC in connection with any efforts of either to recover from the principals or agents of BLMIS or anyone else for amounts advanced by SIPC or paid by the SIPA Trustee to satisfy in part Assignor's Customer Claim in this SIPA liquidation proceeding. Such efforts to recover by the SIPA Trustee or SIPC, either to demand or pursue or to prosecute or settle any collection effort, action or proceeding therefore, shall be at the sole cost of the SIPA Trustee or SIPC.

Effective immediately and without further action, contingent only upon Assignor's receipt from the SIPA Trustee or his agent of a check in the amount of \$500,000.00 as set forth in the SIPA Trustee's Notice of Determination of the Customer Claim dated September 11, 2009, (the "Trustee's Determination"), and upon receipt by the SIPA Trustee of this executed and notarized Partial Assignment and Release, the Assignor does for Assignor's executors, administrators, heirs and assigns hereby remise, release and forever discharge the SIPA Trustee and SIPC, as subrogee to the extent of its cash advances for the satisfaction of the Customer Claim, and, as the case may be, its officers, directors, professionals, employees, agents, successors and assigns, of and from any and all claims arising out of or relating to the Assignor's BLMIS Account, the Customer Claim filed with the SIPA Trustee as protected by the provisions of SIPA, and any and all circumstances giving rise to said Customer Claim which the Assignor now has, or hereafter

may have, for or by any reason, cause, matter or thing whatsoever from the beginning of the world to the date of the execution of this Partial Assignment and Release, only to the extent that the SIPA Trustee and/or SIPC has paid monies to the Assignor to satisfy Assignor's Customer Claim.

Should a final and unappealable court order determine that the Trustee is incorrect in his interpretation of "net equity" and its corresponding application to the determination of customer claims, the Trustee will be bound by that order and will apply it retroactively to all previously determined customer claims in accordance with the Court's order. Nothing in this Partial Assignment and Release shall be construed as a waiver of any rights or claims held by Assignor in having his customer claim re-determined in accordance with any such Court order.

Assignor acknowledges the sufficiency of the consideration to be received in accordance with the SIPA Trustee's Determination and under this Partial Assignment and Release.

IN WITNESS WHEREOF, the undersigned has on this day set forth below duly executed this Partial Assignment of Assignor's Customer Claim and Release, intending to be legally bound hereby.

By: _____
David Alan Schustack

Sworn and subscribed before me this
____ day of _____, 2009.

Notary Public

Exhibit "B"

CUSTOMER CLAIM

Claim Number _____

Date Received _____

BERNARD L. MADOFF INVESTMENT SECURITIES LLC

In Liquidation

DECEMBER 11, 2008

Irving H. Picard, Esq.
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201

Provide your office and home telephone no.

OFFICE: 212 354 4740

HOME: 914 235 1266

Taxpayer I.D. Number (Social Security No.)

121-36-8074



Account Number: 1ZA060
DAVID ALAN SCHUSTACK
253 STRATTON ROAD
NEW ROCHELLE, NY 10804

(If incorrect, please change)

NOTE: BEFORE COMPLETING THIS CLAIM FORM, BE SURE TO READ CAREFULLY THE ACCOMPANYING INSTRUCTION SHEET. A SEPARATE CLAIM FORM SHOULD BE FILED FOR EACH ACCOUNT AND, TO RECEIVE THE FULL PROTECTION AFFORDED UNDER SIPA, ALL CUSTOMER CLAIMS MUST BE RECEIVED BY THE TRUSTEE ON OR BEFORE March 4, 2009. CLAIMS RECEIVED AFTER THAT DATE, BUT ON OR BEFORE July 2, 2009, WILL BE SUBJECT TO DELAYED PROCESSING AND TO BEING SATISFIED ON TERMS LESS FAVORABLE TO THE CLAIMANT. PLEASE SEND YOUR CLAIM FORM BY CERTIFIED MAIL - RETURN RECEIPT REQUESTED.

1. Claim for money balances as of **December 11, 2008**:
 - a. The Broker owes me a Credit (Cr.) Balance of \$ _____
 - b. I owe the Broker a Debit (Dr.) Balance of \$ _____

- c. If you wish to repay the Debit Balance,
please insert the amount you wish to repay and
attach a check payable to "Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC."

If you wish to make a payment, it must be enclosed
with this claim form. \$ _____

- d. If balance is zero, insert "None." _____

2. Claim for securities as of **December 11, 2008**:

PLEASE DO NOT CLAIM ANY SECURITIES YOU HAVE IN YOUR POSSESSION.

- | | <u>YES</u> | <u>NO</u> |
|---|------------|-----------|
| a. The Broker owes me securities | _____ | _____ |
| b. I owe the Broker securities | _____ | _____ |
| c. If yes to either, please list below: | | |

Date of Transaction (trade date)	Name of Security	Number of Shares or Face Amount of Bonds	
		The Broker Owes Me (Long)	I Owe the Broker (Short)
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Proper documentation can speed the review, allowance and satisfaction of your claim and shorten the time required to deliver your securities and cash to you. Please enclose, if possible, copies of your last account statement and purchase or sale confirmations and checks which relate to the securities or cash you claim, and any other documentation, such as correspondence, which you believe will be of assistance in processing your claim. In particular, you should provide all documentation (such as cancelled checks, receipts from the Debtor, proof of wire transfers, etc.) of your deposits of cash or securities with the Debtor from as far back as you have documentation. You should also provide all documentation or

information regarding any withdrawals you have ever made or payments received from the Debtor.

Please explain any differences between the securities or cash claimed and the cash balance and securities positions on your last account statement. If, at any time, you complained in writing about the handling of your account to any person or entity or regulatory authority, and the complaint relates to the cash and/or securities that you are now seeking, please be sure to provide with your claim copies of the complaint and all related correspondence, as well as copies of any replies that you received.

PLEASE CHECK THE APPROPRIATE ANSWER FOR ITEMS 3 THROUGH 9.

NOTE: IF "YES" IS MARKED ON ANY ITEM, PROVIDE A DETAILED EXPLANATION ON A SIGNED ATTACHMENT. IF SUFFICIENT DETAILS ARE NOT PROVIDED, THIS CLAIM FORM WILL BE RETURNED FOR YOUR COMPLETION.

	<u>YES</u>	<u>NO</u>
3. Has there been any change in your account since December 11, 2008? If so, please explain.	_____	_____
4. Are you or were you a director, officer, partner, shareholder, lender to or capital contributor of the broker?	_____	_____
5. Are or were you a person who, directly or indirectly and through agreement or otherwise, exercised or had the power to exercise a controlling influence over the management or policies of the broker?	_____	_____
6. Are you related to, or do you have any business venture with, any of the persons specified in "4" above, or any employee or other person associated in any way with the broker? If so, give name(s)	_____	_____
7. Is this claim being filed by or on behalf of a broker or dealer or a bank? If so, provide documentation with respect to each public customer on whose behalf you are claiming.	_____	_____
8. Have you ever given any discretionary authority to any person to execute securities transactions with or through the broker on your behalf? Give names, addresses and phone numbers.	_____	_____

9. Have you or any member of your family ever filed a claim under the Securities Investor Protection Act of 1970? If so, give name of that broker. _____

Please list the full name and address of anyone assisting you in the preparation of this claim form: _____

If you cannot compute the amount of your claim, you may file an estimated claim. In that case, please indicate your claim is an estimated claim.

IT IS A VIOLATION OF FEDERAL LAW TO FILE A FRAUDULENT CLAIM. CONVICTION CAN RESULT IN A FINE OF NOT MORE THAN \$50,000 OR IMPRISONMENT FOR NOT MORE THAN FIVE YEARS OR BOTH.

THE FOREGOING CLAIM IS TRUE AND ACCURATE TO THE BEST OF MY INFORMATION AND BELIEF.

Date 2-2-2009

Signature 

Date _____

Signature _____

(If ownership of the account is shared, all must sign above. Give each owner's name, address, phone number, and extent of ownership on a signed separate sheet. If other than a personal account, e.g., corporate, trustee, custodian, etc., also state your capacity and authority. Please supply the trust agreement or other proof of authority.)

This customer claim form must be completed and mailed promptly, together with supporting documentation, etc. to:

Irving H. Picard, Esq.,
Trustee for Bernard L. Madoff Investment Securities LLC
Claims Processing Center
2100 McKinney Ave., Suite 800
Dallas, TX 75201



BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York ☐ London

885 Third Avenue
New York, NY 10022
212 230-2424
P&S Dept. 212 230-2436
800 334-1343
Fax 212 838-4061

WE HAVE THIS DAY **CREDITED YOUR**
ACCOUNT WITH THE FOLLOWING:

7/28/08

CHECK

900,000.00

CLIENT'S ACCOUNT NUMBER

DAVID ALAN SCHUSTACK
253 STRATTON ROAD
NEW ROCHELLE NY 10804

1-ZA060-3

DAVID SCHUSTACK JUDY SCHUSTACK 253 STRATTON RD. NEW ROCHELLE, NY 10804-1417		1-250 210 53008284	3200
DATE <i>July 24, 2008</i>			
PAY TO THE ORDER OF <i>Bernard L. Madoff</i>		\$ <i>900,000.00</i>	
<i>Nine Hundred Thousand & 00/100</i>		DOLLARS	
CHASE JPMorgan Chase Bank, N.A. New York, New York 10017 www.Chase.com			
MEMO <i>1-ZA060-3</i>		<i>David Schustack</i>	
+10210000211		5300828451320010090000000000	

CHASE MANHATTAN BANK FOR DEPOSIT ONLY BERNARD L. MADOFF 140 091 703	PAY TO THE ORDER OF	ENDORSE HERE <i>Bernard L. Madoff</i>

THIS REPORT IS PROVIDED TO ASSIST YOU IN EVALUATING THE PERFORMANCE OF YOUR ACCOUNT AND SHOULD NOT BE USED FOR INCOME TAX PURPOSES.

DAVID ALAN SCHUSTACK

1-ZA060-3

253 STRATTON ROAD
NEW ROCHELLE

NY 10804

STARTING EQUITY FOR CURRENT YEAR	581,653.37CR	
CAPITAL ADDITIONS	900,000.00CR	
CAPITAL WITHDRAWALS		
REALIZED P/L FOR CURRENT YEAR	55,389.87CR	
UNREALIZED P/L ON OPEN SECURITY POSITIONS	1,637.75CR	
CURRENT CASH BALANCE	.49CR	
NET MARKET VALUE OF OPEN SECURITIES POSITIONS	1,538,680.50	NET LONG
TOTAL EQUITY	1,538,680.99CR	
ANNUALIZED RETURN FOR CURRENT YEAR	9.55 %	

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York □ London

885 Third Avenue
New York, NY 10022
(212) 230-2424
800 334-1343
Fax (212) 838-4061

DAVID ALAN SCHUSTACK

253 STRATTON ROAD
NEW ROCHELLE NY 10804

Affiliated with
Madoff Securities International Limited
12 Berkeley Street
Mayfair, London W1J 8DT
Tel 020 7493 6222

11/30/08
1-2A060-3-0
*****8074

BOUGHT PRICE	QUANTITY	DATE	DESCRIPTION	ACQUISITION COST	AMOUNT PAID	AMOUNT RECEIVED	AMOUNT ADJUSTED	AMOUNT ADJUSTED
			BALANCE FORWARD			78,479.76		
11/12	1,308	12/14	HEWLETT-PACKARD CO	990	34,598.00	34,598.00		
11/12	858	5068	MAL-MART STORES INC		55,830	47,936.14		
11/12	561	5570	INTERNATIONAL BUSINESS MACHS		87,270	48,980.47		
11/12	5070	8100	CAUTION: NO DATA		12,000	12,000.00		
11/12	2,527	9896	INTEL CORP		54,250	53,501.17		
11/12	1,089	14222	JOHNSON & JOHNSON		59,580	64,925.62		
11/12	1,485	13547	J.P. MORGAN CHASE & CO		38,550	51,276.05		
11/12	192	22873	GOCH CHUN CO		44,550	51,491.17		
11/12	462	27199	MEDNARDS EGR		28,550	28,550.00		
11/12	858	31325	VERCK & CO		28,550	24,529.90		
11/12	3,135	28853	MICROSOFT CORP		21,810	68,499.35		
11/12	627	23120	ORACLE CORPORATION		19,000	57,561.50		
11/12	363	53657	PERSCO INC		20,410	27,994.07		
11/12	2,673	57481	APPLE INC		100,780	36,597.14		
11/12	627	57481	PEPPER INC		16,940	45,386.62		
11/12	1,918	51687	ROBERT KENNEDY FUND		54,000	54,000.00		
11/12	429	62309	AMGEN INC		59,160	69,174.84		
11/12	825	56133	PHILLIP MORRIS INTERNATIONAL		43,400	25,396.64		
11/12	1,020	63835	BANK OF AMERICA		31,550	36,003.00		
11/12	660	70459	QUALCOMM INC		53,490	57,487.20		
11/12	2,145	70961	CITIGROUP INC		12,510	22,314.20		
			CONTINUED ON PAGE			26,918.95		

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

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11/30/08
1-ZAG60-3-0
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DATE	QUANTITY	ACQUISITION COST	DESCRIPTION	PRICE	AMOUNT	AMOUNT CREDITED TO OTHER ACCOUNT
11/12	495		SCHLUMBERGER LTD	49.480	24,511.60	
11/12	1,188		COMCAST CORP	16.510	19,560.88	
11/12	2,343		AT&T INC	21	83,354.80	
11/12	594		CONOCOPHILIPS	52.510	31,213.94	
11/12	396		UNITED PARCEL SVC INC	52.040	20,622.84	
11/12	2,409		ELI LILLY	16.430	40,598.54	
11/12	693		U S BANCORP	29.530	20,491.29	
11/12	825		CHEVRON CORP	73.430	60,612.75	
11/12	396		UNITED TECHNOLOGIES CORP	53.160	21,066.16	
11/12	4,191		GENERAL ELECTRIC CO	17.830	82,436.93	
11/12	1,122		VERIZON COMMUNICATIONS	30.410	34,164.02	
11/12	59		GOOGLE	337.400	33,405.60	
11/12	1,522,000		U S TREASURY BOND		1,522,000.00	
11/12			50% 2/12/2009			
11/12			FIDELITY SPARTAN	DIV		22.68
11/12			U S TREASURY MONEY MARKET			
11/12			DIV 11/12/08			
11/12	20,614	18452	FIDELITY SPARTAN	1		20,614.00
11/12			U S TREASURY MONEY MARKET			
11/12			FIDELITY SPARTAN			5,488.00
11/12			U S TREASURY MONEY MARKET			
11/12			FIDELITY SPARTAN	DIV		5.34
11/12			U S TREASURY MONEY MARKET			
11/12			DIV 11/12/08			
11/12			CONTINUED ON PAGE 3			

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES



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NEW ROCHELLE NY 10804

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12 Berkeley Street
Mayfair, London W1J 8DT
Tel 020 7493 6222

11/30/08 3 *****8074 I-7A060-3-0

DATE	BOUGHT PRICE/SHARE	QUANTITY BOUGHT	SELL PRICE/SHARE	QUANTITY SOLD	DATE	DESCRIPTION	PRICE	QUANTITY	AMOUNT DEBITED TO YOUR ACCOUNT	AMOUNT CREDITED TO YOUR ACCOUNT
11/19				43,486	53331	FIDELITY SPARTAN U.S. TREASURY MONEY MARKET		1		43,486.00
11/19	17,452				53332	U.S. TREASURY MONEY MARKET DOE 05/25/2009				
11/19	17,452				62367	FIDELITY SPARTAN U.S. TREASURY MONEY MARKET		1	17,452.00	
						NEW BALANCE			170,681.73	
						SECURITY POSITIONS				
						APF INC	ACT PRICE	28,560		
						ABBOTT LABORATORIES		52,390		
						ARGEN INC		55,540		
						BANK OF AMERICA		10,250		
						CHEVRON CORP		79,010		
						CISCO SYSTEMS INC		16,540		
						ENTER PRICES		15,390		
						GEAR BOX ES		10,340		
						COMCAST CORP		17,340		
						CL A				
						CONCEPTS		15,230		
						DOCKEN MOBILE USRP		86,150		
						GENERAL ELECTRIC CO		17,170		
						CONTINUED ON PAGE 2				

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

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**885 Third Avenue
New York, NY 10022
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BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York □ London

DAVID ALAN SCHUSTACK

253 STRATTON ROAD
NEW ROCHELLE NY 10804

4881 人

3-7A060-3-8

180/03/IT

8374



Affiliated with
Madoff Securities International Limited
12 Berkeley Street
Mayfair, London W1J 8DT
Tel 020 7493 6222

FORM NO. 10-60	DATE	QUANTITY	UNIT	DESCRIPTION	PRICE PER UNIT	AMOUNT	DEBITED TO	CREDITED TO
1,122				VERIZON COMMUNICATIONS	32.650			
858				WAL-MART STORES, INC.	55.880			
17,386				GENCO INC. 100 NEW	20.850			
				MARKET VALUE OF SECURITIES				
				LONG				
				SHORT				
				11,500,000.00				

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

**Animated with
Madoff Securities International Limited**
12 Berkeley Street
Mayfair, London W1J 8DT
Tel 020 7493 6222

**385 Third Avenue
New York, NY 10022
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800 334-1343
Fax (212) 838-4061**

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York ☐ **London**

DAVID ALAN SCHUSTACK

253 STRATTON ROAD
NEW ROCHELLE NY 10804



27/30/08

*****8074

1-ZA060-3-C

[illegible]

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES

BERNARD L. MADOFF
INVESTMENT SECURITIES LLC
New York □ London

835 Third Avenue
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DAVID ALAN SCHUSTACK

253 STRATTON ROAD
NEW ROCHELLE NY 10804

Associated with
Madoff Securities International Limited
12 Berkeley Street
Mayfair, London W1J 8DT
Tel 020 7493 6222

11/30/08
*****8074
1-ZA360-4-D
1

DATE	DESCRIPTION	QTY	UNIT PRICE	MARKET VALUE	AMOUNT CREDITED TO YOUR ACCOUNT	AMOUNT DEBITED TO YOUR ACCOUNT
	BALANCE FORWARD				78,480.00	
11/12	NOVEMBER 450 CALL	450	17.800	8,010.00		
11/12	S & P 100 INDEX	48829			58,773.00	
11/12	NOVEMBER 450 PUT	450				57,707.00
11/12	S & P 100 INDEX	39258	30	99,033.00		
11/12	DECEMBER 420 CALL	420				9,933.00
11/12	S & P 100 INDEX	47908	37	122,067.00		
11/12	NOVEMBER 450 PUT					170,682.00
	NEW BARNER					
	SECURITY POSITIONS					
	S & P 100 INDEX					
	DECEMBER 420 CALL					
	S & P 100 INDEX					
	DECEMBER 420 PUT					
	MARKET VALUE OF SECURITIES					
	LONG					
	SHORT					
	LONG					
	SHORT					

PLEASE RETAIN THIS STATEMENT FOR INCOME TAX PURPOSES